

SBA

SOP 90 01 3

Size Determination Program

Office of Government Contracting

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**
National

SUBJECT: Size Determination Program	S.O.P.		F
	SECTION 90	NO. 01	

INTRODUCTION

1. Purpose. To outline the policies and procedures for the SBA Size Determination Program.
2. Personnel Concerned. All SBA employees involved in administering the Size Determination Program.
3. Directives Canceled. SOP 90 01 2.
4. Originator. Office of Government Contracting.

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SBA Form 989 (5-90) Ref: SOP 00 23

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Chapter 1

Size Determinations in General

1. What Is a Size Specialist?

A size specialist is a specialist assigned to the Size Determination Program. Size specialists report to Area Directors for Government Contracting. A size specialist reviews the required documentation to determine whether or not a company is small. For further information, see chapters 4, 5, and 6.

2. What Is a Small Business?

A small business is an entity that:

- a) is organized for profit;
- b) has a place of business in the United States;
- c) operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; and
- d) meets the size standard for its industry as designated by the applicable Standard Industrial Classification (SIC) code. (See paragraphs 2-1 and 2-2 for information on SIC codes and size standards, and 13 CFR Part 121 for exceptions to this definition.)

3. Why Would a Business Want to Certify Itself as Small?

A business may want to certify itself (self-certify) as small to be eligible for Government programs and preferences reserved for "small business." For instance, small business set-aside procurements are reserved for offerors or bidders who are small.

4. How Does a Small Business Certify That it Is Small?

- a. For the Federal Government, a small business certifies that it is small simply by indicating that it is small. This is referred to as "self-certification." For Federal Government contracts or subcontracts to large business prime contractors, a

business self-certifies that it is small by marking the appropriate box within the bid document. Since all bid documents create legal obligations, the self-certification is taken at face value, unless there is evidence to the contrary (see paragraph 3-1, What Is a Size Protest?).

- b. For other Federal programs, a business certifies that the information provided in an application is true and correct. A program official reviews that information to assess whether or not the applicant is an eligible small business. For example, as part of the review of a loan application, small business eligibility is one component of a loan officer's review.
- c. If a small business needs to demonstrate to a particular state, city, or other non-Federal Government entity that it is small, it needs to contact the individual state or city for the applicable requirements for "small business" certification.

5. Are There Criminal Penalties for Knowingly Misrepresenting Size in a Self-Certification or Knowingly Making False Statements or Misrepresentations to SBA?

- a. There are severe criminal penalties for both knowingly misrepresenting the size status of a business (15 U.S.C. § 645 (d)), and for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way, the actions of Small Business Administration (SBA) (15 U.S.C. § 645 (a)). Paragraph 7-4 specifies these penalties. Other laws may also apply.
- b. If you know of a business that makes false statements or misrepresents its size to SBA, you should make a referral to the SBA Office of Inspector General.

6. Under What Circumstances Will SBA Make a Size Determination?

- a. SBA reviews a business's size for eligibility for various SBA programs, such as Financial Assistance, Certificates of Competency, and Minority Enterprise Development. Size specialists do not make these reviews. If such review informally concludes that the business is small, no further review of size is necessary. However, if the review indicates that the business is not small, then SBA will provide the business with an opportunity to request a formal size determination (see 13 CFR § 121.303 (Finance) and 121.603 (MED)).
- b. SBA will also make a formal size determination whenever a proper protest or request is received (see paragraphs 3-2, 3-4, and 3-5).
- c. Formal size determinations are made only with respect to eligibility for Government programs or preferences reserved for "small business." SBA will not

make a formal size determination simply at the request of a firm. However, SBA will provide guidance to a business on how to certify.

- d. Typical situations in which SBA will make a formal size determination of a business include:
 - (1) When an SBA program office requests a size determination to determine a business's eligibility for a SBA program or service.
 - (2) When a business requests that SBA make a formal size determination in connection with denial of its application for an SBA program or service.
 - (3) When a contracting officer forwards a timely, specific size protest from a business which is entitled to file a protest (see paragraphs 3-2 through 3-4).
 - (4) When SBA receives the contracting officer's own specific size protest.
 - (5) When another Federal Government agency requests SBA to make a size determination of a business in connection with the business's application for Government programs or preferences reserved for "small business." (*Examples*, the Food and Drug Administration (FDA) has a reduced drug approval fee for small businesses; and the Patent and Trademark Office (PTO) has a reduced patent fee for small businesses.) For requests from agencies other than FDA or PTO, the size specialist will forward the request to Headquarters for guidance.
 - (6) When a court requests a size determination on a business involved in litigation.

7. Who Within SBA Will Make a Formal Size Determination?

- a. The local Area Director for Government Contracting (or designee) makes all formal size determinations, except for size determinations pertaining to the Disaster Loan Program (13 CFR § 121.1002). The Area Director for Government Contracting is the one with responsibility for the area in which the headquarters of the business whose size is being formally determined is located (regardless of the location of the parent company or affiliates).
- b. Determinations for disaster loan applicants will be made by the disaster area office director (or designee) responsible for the area in which the disaster occurred.

8. What Laws and Regulations Govern SBA's Small Business Size Determinations?

Statutory authority rests in the Small Business Act at 15 U.S.C. §§ 632(a), 634(b)(6), and 637(b)(6); SBA's size regulations can be found at 13 CFR Part 121; and the applicable Federal Acquisition Regulations (FAR) are located at 48 CFR Part 19.

Chapter 2

Standard Industrial Classification (SIC) Codes and Size Standards

1. What Are Standard Industrial Classification (SIC) Codes?

SIC codes are numerical designations which distinguish business activities within the U.S. economy. Four-digit numbers designate an industry, which is a group of providers of related goods or services that generate a significant activity in the economy. Each provider is classified into the four-digit industry that best describes its most significant activity. This is called its primary SIC code. Three-digit, two-digit, and one-digit codes are aggregations of industries that represent industry groups, major groups, and industry divisions, respectively. The Office of Management and Budget publishes the *Standard Industrial Classification Manual*, which describes each SIC code.

2. How Does SBA Use SIC Codes?

SBA assigns a size standard to each SIC code. Government Contracting officers designate an SIC code and the applicable size standard for every solicitation. For SBA's financial assistance programs, an applicant must be a small business under both the size standard for its primary SIC and the size standard for the primary SIC of the applicant and its affiliates (see 13 CFR § 121.301).

3. What Are Size Standards?

- a. Size standards establish the maximum size that a business (including its affiliates) may be while still qualifying as "small" within a particular SIC code. Unless otherwise specified by SBA, a size standard is either a number of employees or a dollar amount, such as 500 employees or \$5 million.
- b. Unless specifically authorized by another statute, 15 U.S.C. § 632(a)(2)(C) of the Small Business Act requires that other Federal departments and agencies receive SBA's approval prior to establishing a small business size standard different from SBA's size standards.

- c. For additional information on establishing and reviewing size standards, see chapter 10.

4. Where Are Size Standards Published?

The size standards by SIC code are contained in 13 CFR § 121.201. These are also available through the SBA's Answer Desk (800/U ASK SBA) and SBA's Internet Home Page at (<http://www.sba.gov/SpecialInterests/121.txt>). Size standards for individual programs are contained elsewhere in accordance with the following chart:

Program	CFR Location
Financial Assistance	121.301
Government Procurement (small business set-asides, 8(a) contracts, and restricted COCs)	121.402
Unrestricted COCs	121.408
8(d) Subcontracts	121.410
SBIR Awards	121.702
Reduced Patent Fees Patent & Trademark Office	121.802
Other Agency Programs	121.902

5. How Does One Protest an Incorrect SIC Code?

- a. Any interested party who has been adversely affected by an SIC code designation may appeal to the Office of Hearings and Appeals (OHA). However, with respect to an 8(a) contract, only the Associate Administrator for Minority Enterprise Development may appeal.
- b. An appeal from an SIC code designation must be served and filed with OHA within 10 calendar days after the issuance of the initial invitation for bids or initial request for proposals or quotations (see 13 CFR § 134.304(a)(3)). SBA will dismiss untimely SIC protests.

- c. The appeal must contain the following:
- (1) The substance and date of the determination being appealed;
 - (2) The number and date of the solicitation;
 - (3) The name, address, and telephone number of the contracting officer;
 - (4) Why the contracting officer's determination is alleged to be erroneous;
 - (5) Documentary evidence to support the allegation; and
 - (6) A statement certifying that copies of the appeal have been provided to the contracting officer.

Chapter 3

Size Protests and Requests for Size Determinations

1. What Is a Size Protest?

- a. A size protest is an allegation that a business is other than small under a particular size standard.
- b. The filing of a proper size protest requires satisfying requirements as to 1) who may initiate a size protest; 2) where a protest must be filed; 3) what information must be contained in a protest; 4) the time frames for submitting a protest; and 5) the specificity of the protest. Paragraphs 3-2 through 3-4 of this chapter address these requirements; see also 13 CFR § 121.1001 through § 121.1007.

2. Who May Initiate a Size Protest?

A size protest may only be initiated with respect to Government procurements. There are no size *protests* with respect to non-government procurements or SBA programs (see 13 CFR § 121.1001(a)). (Note, however, that you may have a size determination *request* with respect to SBA programs (see 13 CFR § 121.1001(b), and paragraph 3-5.)

With respect to the following:	These persons may initiate a size protest:
Small Business Set-Aside Programs. 13 CFR §121.1001(a)(1)	<ol style="list-style-type: none"> (1) Any offeror. (2) The contracting officer. (3) SBA's Associate Administrator for Government Contracting. (4) The area director for Government contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (5) Other interested parties. This includes (a) large businesses where only one business submitted an offer for the specific procurement in question; and (b) a business found to be other than small in connection with the procurement where there is only one remaining offeror after that business is found to be other than small.
SBA's Subcontracting Program (8(d)). 13 CFR § 121.1001(a)(2)	<ol style="list-style-type: none"> (1) The prime contractor. (2) The contracting officer. (3) Other potential subcontractors. (4) Other interested parties. (5) The area director for Government contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates.
Small Business	<ol style="list-style-type: none"> (1) A prospective offeror.

With respect to the following:	These persons may initiate a size protest:
Innovation Research (SBIR) Program. 13 CFR § 121.1001(a)(3)	<ul style="list-style-type: none"> (2) SBA's Assistant Administrator for Technology. (3) The funding agreement officer. (4) The area director for Government contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates. (5) Other interested parties.
Department of Defense's Small Disadvantaged Business (SDB) Program and any other similar program of another Federal agency. 13 CFR § 121.1001(a)(4)	<ul style="list-style-type: none"> (1) Any offeror for the specific SDB requirement. (2) The contracting officer. (3) SBA's Associate Administrator for Minority Enterprise Development (MED). (4) SBA's Associate administrator for Government contracting. (5) The area director for Government contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates.
Any unrestricted Government procurement in which status as a small business may be beneficial, including, but not limited to, the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business, and SDB price evaluation preferences. 13 CFR § 121.1001(a)(5)	<ul style="list-style-type: none"> (1) Any offeror. (2) The contracting officer. (3) SBA's Associate Administrator for Minority Enterprise Development (MED). (4) SBA's Associate Administrator for Government Contracting. (5) The area director for Government contracting having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates.

3. Where Must a Size Protest Be Filed?

- a. A protest must be filed with the contracting officer for the procurement. The contracting officer must forward the protest to the SBA Government contracting area office serving the area in which the headquarters of the protested business is located, regardless of the location of any parent company or affiliates (13 CFR § 121.1003). For this purpose, headquarters should be interpreted as the offeror's primary address.
- b. When SBA initiates the protest, it must notify the contracting officer, but SBA does not file the protest with the contracting officer.

4. What Is Required for Submitting a Size Protest?

- a. The protest must pertain to a particular procurement or sale.
- b. The protest must be specific as to the reason and evidence relied upon for alleging that the protested business is "other than small." (SBA must dismiss non-specific protests, see paragraph 4-2.) Use the following example as a guide:

Non-Specific	Specific
An allegation that a business is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation.	An allegation that a business is large because it employs more than 500 employees (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y.
An allegation that a business is affiliated with another business without setting forth any basis for the allegation.	An allegation that a business is affiliated with another business because a named individual is a stockholder or an officer of both businesses.
An allegation that a business is large because it has annual receipts in excess of \$5 million (where the applicable size standard is \$5 million) without setting forth any basis for the allegation.	An allegation that a business is large because it has annual receipts in excess of \$5 million (where the applicable size standard is \$5 million) because it received specified Government contracts in excess of \$5 million last year.

- c. The protest must not be premature. A protest is premature if filed before bid opening or before notification to offerors of the selection of the apparent successful offeror. SBA will dismiss premature protests (see paragraph 4-2).
- d. The protest must be timely and must be delivered either by hand, telegram, mail, fax, or telephone. If a protest is made by telephone, the contracting officer must receive a confirming letter from the protestor either within the 5-day period, (discussed below), or postmarked no later than 1 day after the date of the telephone protest. SBA will dismiss untimely protests (see paragraph 4-2).
 - (1) With respect to non-negotiated procurements or sales (e.g., IFB/sealed bid procurements or proposals that are accepted without negotiation), timely protests must be filed within 5 working days after bid or proposal opening.
 - (2) With respect to negotiated procurements or sales (e.g., RFPs, RFQs), timely protests must be filed within 5 working days after receipt of the contracting officer's notification to the protestor of the identity of the prospective awardee.
 - (3) With respect to multiple award schedule set-asides (e.g., GSA schedules), timely protests must be filed prior to the expiration of the contract period (including renewals).
 - (4) A protest by the AA/GC or the area director is always timely. A protest by a contracting officer is timely providing it is after bid opening or notification to offerors of the apparent successful offeror.
 - (5) If a protest is timely filed, the determination will apply to that procurement even if the contract has been awarded.

5. Who May Request a Size Determination?

With respect to the following:	These persons may request a size determination:
SBA's Financial Assistance Programs. 13 CFR § 121.1001(b)(1)	(1) An applicant for assistance. (2) The SBA official with authority to take final action on the assistance requested.
SBA's MED Program concerning initial and continued MED eligibility. 13 CFR § 121.1001(b)(2)(i)	(1) The MED applicant. (2) The Associate Administrator for MED. (3) The Director of the Division of Program Certification and Eligibility.
SBA's MED Program concerning individual 8(a) subcontract awards, whether sole source or competitive. 13 CFR § 121.1001(b)(2)(ii)	(1) The MED participant nominated by SBA for the particular sole source 8(a) award or the apparent successful offeror for the particular competitive 8(a) award. (2) The Associate Administrator for MED. (3) The SBA program official with authority to execute the 8(a) subcontract. (4) The SBA District Director in the district serving the area in which the headquarters of the MED concern is located, regardless of the location of the parent company or affiliates.
SBA's Certificate of Competency (COC) Program. 13 CFR § 121.1001(b)(3)	(1) The offeror-applicant for a COC. (2) SBA's Associate Administrator for Government Contracting. (3) The responsible SBA Area Director for Government Contracting (see paragraph 1-6).
SBA's Sale or Lease of Government property. 13 CFR § 121.1001(b)(4)	(1) The associate administrator for Government contracting. (2) The responsible SBA Area Director for Government Contracting (see paragraph 1-6). (3) Authorized officials of other Federal agencies administering a property sales program.
Eligibility to pay reduced patent fees. 13 CFR § 121.1001(b)(5)	(1) The applicant for the reduced patent fees. (2) The Patent and Trademark Office.
Determining compliance with small business requirements of another Government agency program, not otherwise specified (e.g., FDA's reduced fee for small businesses). 13 CFR § 121.1001(b)(6)	(1) The official with authority to administer the program involved.

Chapter 4

Beginning a Formal Size Determination

1. As a Size Determination Specialist, What Must I Do When I Receive a Size Protest?


- a. You must verify that the headquarters of the business whose size is protested is located within your area (regardless of the location of the parent company or affiliates).
- b. You must verify that you have all of the following information:
 - (1) A copy of the protest;
 - (2) The name of the business, point of contact, and mailing address of both the business being protested and the person filing the protest;
 - (3) The date that the contracting officer received the protest (unless the protest is a contracting officer's protest);
 - (4) A copy of the solicitation containing the solicitation number, the SIC code, the size standard, the business's self-certification, and the date of the self-certification;
 - (5) The contracting officer's mailing address and telephone number; and
 - (6) The date of bid opening in a sealed bid procurement or the date of the protestor's receipt of the contracting officer's notification on a negotiated procurement.
- c. You must determine that the protest is not premature (see paragraph 3-4c).
- d. You must determine whether the person filing the protest is entitled to initiate the protest (see paragraph 3-2).
- e. You must determine whether the protest is timely (see paragraph 3-4d).
- f. You must determine whether the protest is specific (see paragraph 3-4b).
- g. You must assign a number to the case as follows:

--	--	--	--

Region Where Area Office is Located	SD	FY	Sequential number
---	----	----	----------------------

Separate each component with a hyphen, so it reads as follows:

05-SD-96-047

- h. Log the case into the Size Determination Information System (SDIS). See the SDIS Users  Manual for additional guidance.

2. Under What Circumstances Is a Protest Dismissed?

- a. If a size protest is either premature, not timely, non-specific, or is filed by a person who is not entitled to initiate a protest, you must dismiss the protest (see 13 CFR §§ 121.1004(d) and (e), § 121.1007, and § 121.1001). Before you dismiss the protest, you must consider if the protest has merit (and is not premature), and if so, consider asking your area director or the associate administrator for Government contracting to file a specific protest.
- b. Prepare a letter citing the reasons for dismissing the protest (see Appendix 2, Sample Dismissal Letters). The area director for Government contracting (or designee) must sign the dismissal letter.
- c. You must send the dismissal letter in a verifiable manner *e.g.*, certified mail return receipt requested or overnight mail, to the person who filed the protest. Enclose a copy of 13 CFR Parts 121 and 134 (see 13 CFR § 121.1009(f)).
- d. You must send a copy of the dismissal letter, in a verifiable manner, to the contracting officer and to the business that was the subject of the protest.
- e. You must document the file by including a copy of the dismissal letter in Section 4 of the file, as well as any proof of mailing and receipts (see paragraph 4-8 for details on the organization of the file).

3. What Must I Do When I Receive a Request for a Size Determination?

- a. You must verify that the headquarters of the business whose size you are asked to determine is located within your area (regardless of the location of the parent company or affiliates).
- b. You must verify that you have the following information:
 - (1) The name of the business, point of contact, and mailing address of the business; and
 - (2) The applicable size standard, or applicable SIC code, as determined by the program.
- c. You must verify that the person requesting the size determination has standing to request a size determination (see paragraph 3-5).
- d. You must assign a number and log the case in the computer (see paragraph 4-1g).

4. What Size Standard Must I Use When Making a Size Determination?

- a. For size determinations involving a particular solicitation or procurement (e.g., a small business set-aside; an 8(a) contract; or a COC application), use the size standard which corresponds to the SIC code listed in the solicitation, which was applicable on the date of the self-certification. Note that if a solicitation uses an incorrect or outdated size standard, you must use the correct size standard. You must substitute and apply the proper size standard and explain your reasons for doing so. You may not substitute a different SIC code.
- b. Where no specific solicitation or procurement is involved (e.g., 8(a) eligibility, Financial Assistance), use the size standard (and SIC code) for the business's primary SIC code or the SIC code chosen by the program official.
- c. For additional information, see paragraph 2-3.

5. What Date Must I Use in Making the Size Determination?

With respect to:	Determine size as of:
Procurements (includes COCs - restricted procurements)	The date the business submitted its self-certification.
Certificates of Competency (unrestricted procurements)	The date of the application for a COC.
Small Business Innovation Research (SBIR) Program	The date of the award. (If award is pending, use the date of the request.)
Compliance with the Non-manufacturer Rule	The date of the best and final offer.
Ostensible Subcontractor Rule	The date of the best and final offer.
Financial Assistance Programs (except Preferred Lenders Program)	The date the application for financial assistance is accepted for processing by SBA.
Preferred Lenders Program	The date of approval of the loan by the Preferred Lender.
MED Initial Eligibility	The date of the application for admission into the program.
MED Continued Eligibility	The date of the request for the size determination.

6. What Information Do I Need to Convey to the Business That Is the Subject of a Size Protest or a Request for a Size Determination, and Whom Else Must I Notify?

- a. You must send the business that is the subject of the size determination an initial letter informing it of the size protest or request for size determination and of the need to respond to SBA in a timely manner, as well as the consequences for not responding. The facts of the procurement and the protest or request will dictate which initial letter you must send (see Appendix 3, Sample Initial Letters a through p).
- b. For instance, if the business whose size is being protested will be supplying the product of another manufacturer, you must send the "non-manufacturing" initial letter (see Appendix 3, Sample Initial Letter c).
- c. Or, if a request for a size determination was made by SBA's MED office in connection with a business' initial eligibility for the 8(a) program, you must send

either the 8(a) Eligibility/Average Annual Receipts initial letter, or the 8(a) Eligibility/Number of Employees Initial Letter; whichever is appropriate (see Appendix 3, Sample Initial Letters e and f).

- d. With the initial letter, you must include:
 - (1) A copy of the protest or request. Include only information submitted with the initial size protest. Any supplemental information can not be luded;
 - (2) An SBA Form 355, *Application for Small Business Size Determination*, Appendix 4;
 - (3) A copy of 13 CFR Part 121; and
 - (4) Internal Revenue Service (IRS) Form 4506, *Request for Copy or Transcript of Tax Form*;
 - (5) You must send the initial letter in a verifiable overnight manner (e.g., Federal Express).
- e. You must also send a copy of the initial letter to the contracting officer (if applicable) and the person who filed the protest or made the request.

7. How Many Days Does the Business Have to Respond to the Initial Letter?

The business must respond within 3 working days from receipt of SBA's initial letter unless you grant more time because the business presented you with a good cause for an extension (13 CFR § 121.1008(c)). (See paragraph 5-1 regarding the consequences of a business's failure to timely respond.)

8. How Do I Organize the File?

- a. Create a four-section file and, at a minimum, include the following information on the cover:
 - (1) Business name;
 - (2) City and State where the business is located; and
 - (3) Case number.
- b. The four sections of the file are:

- (1) Section 1, containing the referral, the protest, and all SBA initial correspondence;
- (2) Section 2, containing the business's response;
- (3) Section 3, containing the continuation of the business's response and other miscellaneous papers; and
- (4) Section 4, containing the determination, forwarding letters, and appeal material.

9. How Do I Update the Size Database?

Following the instructions in the Size Program Regional Information System (SPRIS) Users' Manual, enter the following information:

- a. Size determination case number;
- b. Solicitation number;
- c. Name, address, and point of contact of the business whose size is being determined;
- d. Name, address, and point of contact at the procuring agency;
- e. Name, address, point of contact of the business that initiated a protest or requested the size determination;
- f. The initials of the person who will make the size determination;
- g. The date the protest or request was received by the Office of Government Contracting;
- h. The due date of the size determination;
- i. Extensions granted should be documented in the narrative comment section;
- j. The applicable size standard; and
- k. Any narrative comment you may wish to include.

10. How Many Days Do I Have to Complete the Size Determination?

- a. In connection with procurements, you have 10 working days from the date the protest was received to complete the size determination and inform the contracting officer of the size determination, unless you obtain additional time from the contracting officer (FAR 19.302(g) and (h)). (See paragraph 7-5 for information on the effect of a size determination on the contracting officer's actions.)
- b. You must confirm extensions of time in writing with the contracting officer. Send a copy of the confirmation letter to both the business whose size is being determined and the business that initiated the protest. Include a copy of the confirmation letter in Section 1 of the file. (See Appendix 5, Sample Confirmation Letter of a Contracting Officer's Verbal Deadline Extension.)
- c. Alternatively, if you have electronic communications capability with the contracting officer, you may receive the contracting officer's letter granting an extension, or transmit a letter confirming the verbal extension to the contracting officer electronically, as long as you print a copy of it and place the copy in Section 1 of the file. An electronic or paper copy must also be sent to both the business whose size is being determined and the business who initiated the protest.
- d. On the other hand, if your request for additional time is denied by the contracting officer, you must also include in the file the date you requested the extension; the name of the person you spoke to; and the date the extension was denied. You must then make all attempts to complete the size determination within the initial 10-day time frame. However, if this time frame is impossible, document the file with reasons the deadline could not be met.
- e. In connection with other programs, you must negotiate the time with the SBA program official (e.g., MED) or Federal agency (e.g., FDA).

11. What Are the Consequences If a Size Determination Cannot Be Completed Within the Deadline for Making the Size Determination?

The contracting officer may award the contract without considering your size determination (FAR 19.302(h)). This could result in the contract being awarded to a business that is other than small. (See paragraph 7-5 for information on the effect of a size determination on the contracting officer's actions.)

Chapter 5

Making a Formal Size Determination

1. **What If a Business Does Not Respond in a Timely Manner to SBA's Request for Size Information or Does Not Provide All Information Requested?**

SBA may assume that the business failed to respond, or failed to provide all information, because disclosure would be contrary to its interests. Therefore, you may determine that the business is other than small (13 CFR § 121.1008(d)).

2. **What Must I Do When I Receive a Response from the Business?**

You must review the information and determine if the business meets the criteria of a small business as provided for in the regulations at 13 CFR §§ 121.101 through 121.903. You will need to:

- a. Determine whether the business is eligible for SBA assistance. Refer to 13 CFR § 121.105 for guidance on eligibility.
- b. Determine if the business is affiliated with any other business(es). (See paragraph 5-5, and refer to 13 CFR § 121.103 for guidance on affiliation).
- c. Calculate the business's average annual receipts (see paragraph 5-3) or number of employees (see paragraph 5-4). These calculations must include any affiliates. Which calculation you perform will depend upon the applicable size standard (paragraph 4-4 discusses how to determine the applicable size standard).
- d. Consider any applicable decisions made by the Office of Hearings and Appeals (OHA). These decisions generally can be found using Internet, Special Interests (beginning with Fiscal Year 1995), and the OHA Digest (see chapter 8).

3. **How Do I Calculate Average Annual Receipts?**

You must calculate average annual receipts by using the firm's and its affiliates' Federal income tax returns for the last 3 completed fiscal years divided by three. Receipts mean total income plus the cost of goods sold. This includes receipts from rents, fees, commissions, and other income. If tax returns are not yet available, you may accept a certified statement from the firm's accountant, financial officer, etc. 13 CFR § 121.104 further defines receipts, periods of measurement for a firm in business less than three

years, and affiliates' receipts.

4. How Do I Calculate Number of Employees?

Number of employees is based on the average number of employees, including employees of domestic and foreign affiliates, for the preceding completed 12 calendar months. Part-time and temporary employees are counted the same as full-time employees (13 CFR § 121.106 further explains this).

5. What Is Affiliation?

- a. As the size determination specialist, it is your job to determine if affiliation exists. Generally, affiliation is present when one business controls or has the power to control the other, or when a third party (or parties) controls or has the power to control both businesses.
- b. Refer to 13 CFR § 121.103 for details on what constitutes affiliation. Some factors mentioned are:
 - (1) Stock ownership (13 CFR § 121.103(c)). You must consider whether a person owns or controls, or has the power to control, 50 percent or more of the voting stock of a firm. If so, that person is considered to control that firm. You must also consider instances in which two or more persons each owns and controls, or has the power to control, less than 50 percent of the voting stock of a firm. In those instances, determine whether the aggregate of these holdings is large as compared with other stock holdings. If so, those persons are considered to control that firm. Any other firms these persons own or control are considered to be affiliates of the applicant.
 - (2) Stock options, convertible debentures, and agreements to merge (13 CFR § 121.103(d)). Treat these as though the rights granted have been exercised. Give present effect to an agreement to merge or sell stock whether such agreement is unconditional, conditional, or finalized but unexecuted. If these rights have been granted, affiliation exists.
 - (3) Common management (13 CFR § 121.103(e)). Consider whether one or more officers, directors or general partners of the firm controls the board of directors and/or the management of another firm. If so, the firms are affiliates.

- (4) Previous business relationships or ties with another business, including family relationships (13 CFR § 121.103(a)(3)). You must obtain detailed explanations and documentation from the firm on these issues. There is no specific formula for finding indicators of affiliation in some of these complex areas. Some tools to use may be commercial credit reports, loan agreements, annual reports, bylaws, or advertising. Through your research, you may discover patterns of subcontracting, information from buying activities regarding joint representations of the firms, commingling of staff and/or facilities, and other veiled attempts to disguise the true nature of the relationship. Persons with an identity of interest, such as family members or persons with common investments in more than one concern, may be treated as though they are one party, unless they demonstrate otherwise.
- (5) Contractual relationships or economic dependency (13 CFR §§ 121.103(a)(3) and (d)). Consider whether a firm can survive on its own or if it is economically dependent upon another firm. If there is a contractual relationship between two firms for the procurement in question, you will probably find the firms to be affiliated.
- (6) Joint venture arrangements (13 CFR § 121.103(f)). Consider firms to be affiliated if they are seeking SBA financial assistance for use in connection with the joint venture or if they are bidding on a particular procurement or property sale as joint venturers.
- (7) Ostensible subcontractors (13 CFR § 121.103(f)). This refers to instances in which the prime contractor is unusually reliant upon the subcontractor or if the subcontractor will perform primary and vital requirements of a contract. To determine if ostensible subcontractor exists, you must thoroughly review the Statement of Work, subcontractor agreements, and the technical and cost proposal. One of the methodologies you may use is to consider the following factors:
 - (a) Who will manage the contract?
 - (b) Which party possesses the requisite background and expertise to perform the contract?
 - (c) Which party chased the contract?
 - (d) What degree of collaboration was there on the proposal?
 - (e) Are discrete tasks to be performed by each, as opposed to a commingling of personnel and material?

- (f) What amount of work is to be performed by each?
 - (g) Which party performs the more complex and costly contract functions?
- (8) Franchise or license agreements (13 CFR § 121.103(g)). Review the franchise or license agreement to determine whether the franchisor controls, or has the power to control, the franchisee. The restraints imposed on a franchisee or licensee by its agreement relating to standardized quality, advertising, accounting format, and other similar provisions, are usually not considered in determining affiliation providing the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. However, you may find affiliation based on other issues, such as common ownership, common management, or excessive restrictions upon the sale of the franchise interest (see SOP 70 50, Appendix 3d "Franchise Eligibility Guidelines").
- c. You must also refer to 13 CFR § 121.103(b) for the exclusions from affiliation.

6. What Are the Possible Size Determinations Which I May Make?

- a. You may determine that the business is either:
 - (1) Small;
 - (2) Other than small; or
 - (3) Other than small for this procurement only.
- b. Your determination will be based on whether the business is eligible for SBA assistance and your calculation of the business's (including any affiliates') average annual receipts or number of employees.
 - (1) If the business is eligible for SBA assistance and its average annual receipts or number of employees do not exceed the applicable size standard, you will determine the business to be small.
 - (2) If the business is not eligible for SBA assistance and/or its average annual receipts or number of employees exceeds the applicable size standard, you will determine the business to be either "other than small" or "other than

small for this procurement only."

- (3) You must use the "other than small for this procurement only" designation if the circumstances leading to the determination are specific to the solicitation. Examples include when a business is found to be affiliated with an "ostensible subcontractor" or a joint venture partner, and as a result of the affiliation, the business's average annual receipts or number of employees exceeds the applicable size standard. In such an instance, the business would be determined "other than small for this procurement only," since the affiliation exists solely with respect to the procurement.

7. What Is the Format for Writing a Formal Size Determination?

- a. You must write the decision in a clear, concise manner. It should include: an introduction; a discussion of the evidence which addresses all of the allegations; applicable regulation citations and precedent OHA decisions; a logical reasoning for the decision; and a conclusion (see Appendix 6, [Sample Size Determination Format](#)). The size determination must be signed by the area director for Government contracting or designee.
- b. You must avoid specifying the business's number of employees or its annual receipts (due to the protections of FOIA). Instead, you should make summary statements such as "the business's average annual receipts are less than the applicable size standard of \$ XX million; or exceed the applicable size standard of \$ XX million."

Chapter 6

Completing the Formal Size Determination

1. What Must I Do Once I Have Written the Size Determination?

- a. You must prepare a notification letter (see appendix 7 for sample notification letters a through h) informing the business of the determination and of its right to file an appeal petition with the Office of Hearings and Appeals (OHA). (See chapter 8 regarding appeal petitions and OHA.) Your size determination and the notification letter must be signed by the area director (or designee).
- b. Send the size determination and the notification letter, along with a copy of 13 CFR Part 134, in a verifiable fashion to:
 - (1) The business that was the subject of the size determination;
 - (2) Any persons found to be affiliated with the business;
 - (3) The person which filed the protest or made the request; and
 - (4) The contracting officer.

2. How Can I Correct an Administrative or Factual Error in My Size Determination?

If your size determination contains a clear administrative error or a clear mistake of fact, you may reopen the size determination to correct the error or mistake. However, you must first vacate your original determination. Do this by writing to all parties involved, including OHA if the decision has been appealed. SBA may not reopen the size determination if OHA has accepted the case for review (see chapter 8).

3. How Do I Update the File and the Size Database?

- a. File a copy of the size determination and notification letter in Section 4 of the file (see paragraph 4-8 regarding organization of the file). You must also file in Section 4 a copy of proof of mailing and any return receipts.
- b. Update the size database by entering the following information:
 - (1) If applicable, an extended due date. (You should document the granting of

the extension in the narrative comment section.)

- (2) The date the size determination was completed.
- (3) The decision.
- (4) The names and locations of any businesses found to be affiliated with the business.
- (5) Any narrative comment you may wish to include.

4. How Long Must I Keep the Written File?

You must keep the written file for 2 years from the date of the final size determination. At the end of the 2 years, you must transfer the file to Federal Records Center (FRC) for an additional 4 years. The file may be destroyed 6 years after the date of the final size determination (see SOP 00 41).

Chapter 7

Significance of a Formal Size Determination

1. What Is the Significance of Being Found Small?

A business found to be small has met the "small business" requirements of the contract or program for which it applied.

2. What Is the Significance of Being Found Other Than Small?

A business found other than small has not satisfied the "small business" requirements of the contract or program for which it applied. As a result, without first obtaining recertification (see paragraph 7-3 below) or prevailing in an OHA appeal, the business cannot self-certify that it is small at the same size standard (or a smaller size standard) for which it was found other than small.

3. What Is Recertification?

A business that has been found other than small may request to have its size status reconsidered. This is called recertification. The request for recertification must include a current completed SBA Form 355, *Application for Size Determination*. It must also include any pertinent information that shows it has overcome elements which resulted in its finding of other than small. SBA will then make a new size determination.

4. What Are the Penalties for a Business Knowingly Misrepresenting its Size Status or Knowingly Making False Statements or Misrepresentations?

a. Criminal penalties include:

- (1) A fine of not more than \$500,000 and/or imprisonment for not more than 10 years for knowingly misrepresenting the small business size status of a business in connection with procurement programs (other laws may also apply). See Section 16(d) of the Small Business Act, 15 U.S.C. 645(d).
- (2) A fine of not more than \$5,000 and/or imprisonment for not more than 2 years for knowingly making false statements or misrepresentations to SBA for the purpose of influencing, in any way, the actions of the Agency (other laws may also apply). See Section 16(a) of the Small Business Act, 15 U.S.C. 645(a).

b. Civil penalties include:

- (1) Administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3812).
- (2) Suspension and debarment as specified in Subpart 9.4 of Title 48, CFR.
- (3) Remedies provided under the False Claims Act (31 U.S.C. § 3729, et seq.).

5. What Is the Effect of a Size Determination on the Contracting Officer's Actions with Respect to a Particular Procurement?

- a. The contracting officer should wait 10 working days for SBA's size determination (FAR 19.302(h)). However, if the contracting officer makes a written determination that an award must be made to protect "the public interest," the contracting officer may make the award prior to receiving SBA's size determination (FAR 19.302(h)).
- b. Absent the unusual circumstance described above, the contracting officer must not award a small business set-aside contract to a business found to be other than small, and will award the small business set-aside contract to a business found to be small (unless objections other than size are found requiring denial of the award).
- c. After receiving the results of a size determination, the contracting officer is not required to wait any additional time to see if there will be an appeal petition filed with OHA (see FAR 19.302(i)). The contracting officer may immediately proceed with award of the contract following receipt of the size determination (see paragraph 8-7 regarding what impact an appeal petition could have on the procurement).

Chapter 8

Size Appeal Petitions Before the Office of Hearings and Appeals (OHA)

1. What Is a Size Appeal Petition?

- a. A size appeal petition is a written argument submitted to OHA in support of the position that an SBA size determination is incorrect.
- b. There are requirements as to 1) who may file an appeal petition; 2) where and how a petition must be filed; 3) what information must be contained in the petition; and 4) the time frames for filing the petition. Paragraphs 3 and 4 of this chapter address these requirements (see 13 CFR § 134.301 through § 134.318).

2. What Is OHA?

OHA is SBA's independent appellate administrative tribunal which, among its other responsibilities, hears appeals of SBA's size determinations.

3. Who May File a Size Appeal Petition with OHA?

The following individuals may file an appeal petition with OHA:

- a. Any person adversely affected by a size determination;
- b. The associate or assistant administrator for the SBA program involved; and
- c. The procuring agency's contracting officer responsible for the procurement affected by the size determination.

4. How Is a Size Appeal Petition Filed with OHA?

- a. An appeal from a size determination starts with the timely serving and filing of an appeal petition with OHA at the Office of Hearings and Appeals, U.S. Small Business Administration, Mail Code 2440, 409 Third Street, S.W., Washington, DC 20416 (13 CFR § 134.204 contains the service and filing requirements).
- b. Title 13 CFR § 134.305 contains the information which is required to be contained in the appeal petition. There is no required format for an appeal petition.

However, 13 CFR § 134.304 establishes the following time frames.

With respect to the following:	Timeframes:
Appeal from a size determination in a pending procurement or a pending Government property sale.	Appeal petition must be served and filed within 15 days after service of the size determination. 13 CFR § 134.304(a)(1).
Appeal from a size determination other than one in a pending procurement or a pending Government property sale.	Appeal petition must be served and filed within 30 days after service of the size determination. 13 CFR § 134.304(a)(2).

5. Is There an Absolute Right to Appeal a Size Determination to OHA?

There is no absolute right to an appeal. Acceptance of the appeal petition is at the sole discretion of OHA (13 CFR § 121.1101).

6. As a Size Determination Specialist, What Must I Do If an Appeal Petition Is Filed with OHA?

- a. Upon receipt of an appeal petition, and in response to a request by OHA, the area office which issued the size determination must immediately send to OHA (in a verifiable manner) the entire original case file relating to the size determination. (Make a copy of pertinent portions of the file and keep it in case the original is lost.)
- b. You must also update the size database by entering the date the case file was sent to OHA (see paragraph 4-9 regarding the database). Following OHA's decision, you must again update the size database to reflect the decision, the date of OHA's decision, and OHA's decision number. Although 13 CFR § 121.1004(c) states that timely protests apply to that procurement regardless of whether or not the contract has been awarded, most contracting officers use the FAR instead of SBA's regulations.

7. What Impact Does an Appeal Petition Have on the Subject Procurement?

If the contracting officer receives OHA's decision before award of the contract, the decision will apply to the subject procurement (FAR 19.302(i)). However, if the contracting officer receives the OHA decision after award of the contract, the decision will not apply to that procurement (FAR 19.302(i)).

8. What Outcomes Are Possible from an Appeal?

- a. If OHA accepts the appeal petition for review, it may affirm, in whole or in part, the size determination, reverse the size determination, or remand the case for further review or for further information. Beyond OHA, there is no further review within SBA.
- b. If the case is remanded, you must contact the contracting officer immediately to determine the time frame in which a new determination will be made. If the contract has already been awarded, the contracting officer may give you more than 10 days. If the contract has not been awarded, you must receive a minimum of 10 days. A remand by OHA vacates the initial size determination.

Chapter 9

Freedom of Information Act (FOIA) Requests

1. What Must I Do When I Receive a FOIA Request?

Prior to issuing any information in response to a FOIA request, you must review the Disclosure of Information SOP (SOP 40 03), and consult with counsel or your FOIA officer. Responding to a FOIA request will require you to, among other things:

- a. Respond within the FOIA time limits;
- b. Provide the requestor with an estimate of the fees involved;
- c. Determine which records are responsive;
- d. Determine which of the responsive records are releasable;
- e. Determine which exemptions are appropriate if any information is to be withheld;
- f. Prepare a Predisclosure Notification letter;
- g. Create an index of withheld information (where applicable); and
- h. Provide appeal rights if information is withheld, if no information responsive to the request exists, and when fee waiver requests are denied.

2. What Documents Must I Disclose When Responding to a FOIA Request?

- a. You must disclose all documents and information not subject to a FOIA exemption (see SOP 40 03, §Disclosure of Information. The two FOIA exemptions most commonly used by the size determination specialists are:
 - (1) Exemption 4 (5 U.S.C. 552(b)(4)). This exemption allows you to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential" information, that, if disclosed, could:
 - (a) Be competitively harmful to the submitter of the information;
 - (b) Impair the Government's ability to obtain similar necessary information in a purely voluntary manner in the future; and

(c) Affect other governmental interests, such as program effectiveness and compliance.

(2) Exemption 6 (5 U.S.C. 552(b)(6)). This exemption covers personnel and medical files and similar files, that, if disclosed, would constitute "a clearly unwarranted invasion" of individual privacy and might adversely affect the individual or his/her family.

b. Each request must be carefully analyzed. With respect to a third party requestor, Table A outlines which documents and information will generally be withheld or disclosed. You must provide Predisclosure Notification in accordance with EO 12600 and 13 C.F.R. § 102.6, to submitters of confidential commercial information if you decide such information may be disclosed. Always consult with Counsel prior to responding to a FOIA request.

3. How Do I Finalize a Response to a FOIA Request?

Prepare a cover letter and include copies of both the documents you are releasing (including copies of any redacted documents), and an index of records withheld in full or in part (redacted) and the reasons for withholding the records. Consult with counsel and review SOP 40 03, § Disclosure of Information. The letter must contain the appeals paragraph from the SOP if information is withheld or if no records exist that are responsive to the request. The area director for Government contracting, or designee, should sign the cover letter and a copy should be sent to the FOIA office.

Table A

Application for Small Business Size Determination (SBA Form 355)	Document:		Disclose or Withhold?	If Withheld, the applicable FOIA Exemption is:
	Information:			
	a.	Name and address of business	Disclose	--
	b.	Name of person to contact	Disclose	--
	c.	Sales, assets, net worth	Withhold	Ex. 4
	d.	Primary business	Disclose	--
	e.	Average income	Withhold	Ex. 4
	f.	Why the business applied	Disclose	-
	g.	Major products	Disclose	--
	h.	Total sales of products	Withhold	Ex. 4
i.	Whether business operates under a license	Unless already public, withhold along with licensing agreement.	Ex. 4	
j.	Principals of applicant business	Disclose names & titles✓; Withhold home addresses; ✓If an individual's share of the business is 10 percent or less, withhold the information.	-- Ex. 6 Ex. 4 and Ex. 6	
k.	Information on affiliates	Disclose names & business addresses	--	

Application for Small Business Size Determination (SBA Form 355) <i>continued</i>	1.	Principals of affiliates	Disclose names & titles✓; Withhold home addresses; ✓If an individual's share of the business is 10 percent or less, withhold the information.	-- Ex. 6 Ex. 4 and Ex. 6
		Products of affiliates	Withhold sales; Disclose products.	Ex. 4 --
	n.	Remaining financial information	Withhold	Ex. 4
Articles of Incorporation			Withhold if not on file with the State; Disclose if on file with the State.	Ex. 4 --
By-Laws			Disclose	--
Breakdown of number of Employees			Withhold	Ex. 4
Tax Returns			Withhold	Ex. 4 and Ex. 6
Financial Statements			Withhold	Ex. 4
Breakdown of purchased parts and their respective value			Withhold	Ex. 4
Operations to be performed in-house			Withhold	Ex. 4
Method or equipment to be utilized			Withhold	Ex. 4
Value of labor contribution			Withhold	Ex. 4
Business' operations toward the manufacture of the end product			Withhold	Ex. 4
Information contained in a cover letter, or other unsolicited information.			Determine on a case-by-case basis. Consult counsel.	Determine on a case-by-case basis.

Chapter 10

Establishment and Review of Size Standards by the Office of Size Standards

1. How Do Size Standards Get Reviewed?

The SBA may establish or review a size standard for an industry or program as it considers appropriate. In addition, the SBA will consider requests from the public and Federal agencies to establish or revise size standards.

2. To Whom Within SBA Are Requests for Changes to Size Standards Sent?

Send requests for changes to a particular size standard, as well as concerns or suggestions for new size standards, to the Assistant Administrator for Size Standards, U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C., 20416. The Office of Size Standards will usually be the office within the SBA that reviews the request.

3. What Must Be Included in a Size Standards Request?

No specific information or format is required of a request to review a size standard. The requestor should, however, explain why he or she believes the current size standard is inappropriate and how it is a problem for small business. Also, the requestor should provide reasons why another size standard would be a better definition of a small business for the applicable industry or program.

4. What Will the Office of Size Standards Do with the Request?

The Office of Size Standards will review the information contained in the request, as well as other information available to it, and decide whether or not to conduct an in-depth industry analysis of the size standard. Generally, the requestor will be advised of the office's decision within 30 days.

5. As an Economist in the Office of Size Standards, How Do I Review a Size Standards Request?

- a. Although not every request can be evaluated in the same manner, most requests should be reviewed by evaluating the following information:
 - (1) Evaluate the reasons why a change to the size standard is being requested and decide whether or not those reasons are credible and, if so, whether they would constitute a sufficient reason for establishing or changing the size standard.
 - (2) Review key industry characteristics to determine if the industry structure supports the current size standard.
- b. Based on these considerations, provide a recommendation to the Assistant Administrator for Size Standards.

6. What Factors Do I Consider When Conducting an Industry Analysis?

- a. An industry analysis should consider the following:
 - (1) The structure of an industry and its various economic characteristics, including the degree of competition, average business size, start-up costs, barriers to entry, and the distribution of firms, revenues and/or employees by firm size.
 - (2) SBA program objectives and the impact of different size standards on those programs.
 - (3) Whether a size standard successfully excludes those businesses which are dominant in the industry.
- b. Other factors may be considered if applicable to the industry.
- c. To adopt a new size standard, SBA will publish a notice of proposed rulemaking in the Federal Register. SBA then considers the public's comments in establishing the final size standard.

7. How Do I Make a Recommendation?

Prepare a report that makes a recommendation to the Assistant Administrator for Size Standards. Your report should consist of an assessment of the factors reviewed and the basis of your recommendation.

8. Who Approves the Recommendation?

Only the SBA's administrator can approve a size standard. A recommendation for approval is either:

- a. Reviewed by the Size Policy Board, and then forwarded to the administrator; or
- b. Forwarded to the administrator in a Decision and Information Memorandum (SBA Form 606), after circulation to and clearance of all appropriate SBA officials.

9. What Is the Size Policy Board?

The Size Policy Board is a group of agency officials that meet to consider and make recommendations to the administrator on small business size eligibility requirements, including size standards. The Board is chaired by the deputy administrator and is comprised of the agency's major program offices and offices with size responsibilities. The Board has ten members, six voting and four non-voting. The voting members are the deputy administrator and the heads of the Offices of Financial Assistance, Government contracting, Minority Enterprise Development, and Technology and Advocacy. The non-voting members are one regional administrator and the heads of the Offices of Size Standards, Hearings and Appeals, and General Counsel.

10. What Recommendations Go Directly to the Administrator?

Most size standards recommendations are reviewed by the Size Policy Board. However, at the discretion of the Size Policy Board Chair, a recommendation may be provided to the administrator without the Board's review. On size standard issues that have a limited effect on the Agency's programs or that make minor or technical changes to the size standards regulations, the Office of Size Standards may submit the recommendation to the administrator through an SBA Form 606 without the review of the Board.

11. If the Administrator Approves a Recommended Size Standard, When Does It Take Effect?

A size standard can only be implemented after a final rule has been published in the Federal Register, and becomes effective on the date specified in the final rule (usually 30 days after publication).

12. How Do I Prepare a Notice of Proposed Rulemaking?

You must prepare a proposed rule following the instructions contained in the Office of Federal Register publication Document Drafting Handbook and SOP 00 03, "Federal Register Documents."

13. How Do I Evaluate Public Comments to a Proposed Rule?

- a. Your evaluation of public comments should include three parts: (1) a statistical summary of the comments; (2) an evaluation of major issues; and (3) the development of a recommendation and options. No specific format is required other than to prepare a clear and concise evaluation of the comments for the Size Policy Board members and senior management.
- b. The statistical summary of the comments should show the number received, the number for and against the proposal, a general identification of commenters (e.g., associations, Federal agencies, 8(a) firms), and if appropriate, a summary of any other relevant information.
- c. The most important part is the evaluation of the major issues raised by the public comments. This evaluation, or a similar evaluation, will be included in a final rule. It must describe the major issues raised by the commenters, explain why they are an issue, and make an assessment of the issue. (Is it a valid point? If not, why not?) In the final rule, SBA will state its position on an issue and provide a reasonable basis for that position. The evaluation of major issues should be concise, but it must provide enough information so anyone can understand the issue and the reasons for SBA's position.
- d. The final part consists of a recommendation of the office and presents options for the Size Policy Board's consideration. These shall include a brief statement in support or against the recommendation or option.

14. How Do I Make a Recommendation for a Final Rule?

Prepare a report that makes a recommendation to the assistant administrator for size standards based on your evaluation of public comments and a reassessment of the factors previously reviewed.

15. How Do I Prepare a Final Rule?

You must prepare a final rule following the instructions contained in the Office of Federal Register publication Document Drafting Handbook and SOP 00 03. The final rule will include a summary of the proposed rule, the reasons for SBA's decision, and an evaluation of public comments.

16. Who Approves the Final Rule?

As described in paragraph 10-8, only the administrator can approve a size standard. The approval process of a final rule is the same as with a notice of proposed rulemaking.

17. What Information Should I Keep on a New or Revised Size Standard?

The information supporting the development of a size standard and all official correspondence become part of the administrative record. The administrative record should consist of a "documentation file" and an "administrative file."

- a. Documentation File: At a minimum, the documentation must be sufficient to support the basis of a size standard. Several specific types of information are noted below:
 - (1) All statistical data used in the rule to support the size standard and its impact;
 - (2) Letters requesting or commenting on the size standard (other than public comments, which are to be filed as part of the administrative file);
 - (3) Copies of, or full citation of, publications referenced in the rule or significantly relied upon in analyzing the size standard;
 - (4) Memos on the size standard, if appropriate; and
 - (5) A copy of analysis of size standard issues, including the analysis of public comments.

- b. Administrative File: This file contains formal documents concerning the size standard action. If it includes proprietary information to be protected from disclosure, place the information into a separate folder and reference it in the administrative file. Several specific types of information for inclusion into the administrative file are noted below:
- (1) Documents prepared for the Size Policy Board;
 - (2) Minutes of the Size Policy Board meeting(s) that discussed the size standard and the reasons for the Board's recommendation;
 - (3) Copy of SBA Form 606 and all clearances;
 - (4) Dates that the rule was forwarded to OMB, cleared by OMB, and sent to the Federal Register for publication;
 - (5) Public comments on the rule; and
 - (6) Memos and other official correspondence on the size standard action.

18. What Process Does the SBA Follow to Approve Size Standards of Another Federal Agency?

Requests from Federal agencies that require the approval of the Administrator of the SBA before using a size standard different from the SBA's size standard must be submitted to the Administrator following the procedure in 13 CFR 121.901-903. For most requests, the Office of Size Standards will review the request and make a recommendation to the administrator.

19. How Do I Review a Size Standard for Another Federal Agency?

- a. A request by a Federal agency to establish a size standard different from SBA's size standard should be summarized in a brief (one to two page) issue paper. If more information is necessary, attachments may be included with the issue paper. The issue paper should contain the following information:
- (1) Concise statement of what is being proposed or recommended by the Federal agency.
 - (2) The applicable SBA size standard.

- (3) Issues concerning the proposed size standard. These issues may include topics such as the reason for a standard different from SBA's size standard or the advantages and disadvantages of the proposed size standard.
 - (4) The impact on small business of the proposed size standard.
 - (5) A recommendation along with your reasons.
- b. Prepare a letter for the administrator's signature.

Appendix 1**Index to Forms and Reports**

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Report

Reserved

Appendix 2
(paragraph 4-2)
Sample Dismissal Letters

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Appendix 2 (cont'd)

a. Protest Is Not Specific

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since the protest failed to set forth specific grounds for the allegation as required in 13 CFR § 121.1007.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- the Area Office which issued the size determination;
- the date the size determination was received;
- the solicitation or contract number;
- name, address and telephone number of the contracting officer;
- a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very
Effective Date: January 28, 1998

specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)**b. Protest Is Premature**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protested Business:
 Solicitation No:
 Procuring Activity:
 SIC Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since it is premature according to 13 CFR § 121.1003-1006. This dismissal does not preclude you from submitting a timely protest in accordance with the regulations at 13 CFR § 121.1001 through 121.1010.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
 U.S. Small Business Administration
 409 Third Street, S.W.
 Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- the Area Office which issued the size determination;
- the date the size determination was received;
- the solicitation or contract number;
- name, address and telephone number of the contracting officer;
- a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)**c. Protest Is Not Timely**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protested Business:
 Solicitation No:
 Procuring Activity:
 SIC Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. This protest has been dismissed since the protest was not filed in a timely manner as required in the regulations at 13 CFR § 121.1004.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- ☞ the Area Office which issued the size determination;
- ☞ the date the size determination was received;
- ☞ the solicitation or contract number;
- ☞ name, address and telephone number of the contracting officer;
- ☞ a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- ☞ the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)

d. Protestor Is Not Entitled to Protest

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protested Business:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. According to the regulations at 13 CFR § 121.1001, you are not entitled to initiate a size protest. Therefore, the protest has been dismissed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- the Area Office which issued the size determination;
- the date the size determination was received;
- the solicitation or contract number;
- name, address and telephone number of the contracting officer;
- a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer

Appendix 2 (cont'd)**e. Protestor Is Not Entitled to Protest an 8(a) Business**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protested Business:
 Solicitation No:
 Procuring Activity:
 SIC Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has received your protest concerning the size of the subject business. Based on the regulations at 13 CFR § 121.1001, the SBA has concluded that you are not entitled to initiate a size protest of participants in the Minority Enterprise Development (MED) Program. Only SBA has the authority to question the size of an MED participant in connection with either a competitive or sole source 8(a) award. Therefore, in accordance with 13 CFR § 121.1001, 13 CFR § 124.311 and 48 CFR § 19.805-2, your protest is dismissed. However, your protest will be forwarded to the appropriate SBA official for any action that may be deemed appropriate.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- ☞ the Area Office which issued the size determination;
- ☞ the date the size determination was received;
- ☞ the solicitation or contract number;
- ☞ name, address and telephone number of the contracting officer;
- ☞ a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- ☞ the name, address, telephone number and signature of the appellant or its attorney.

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A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: 13 CFR Part 121 (size regulations)
13 CFR Part 134 (OHA regulations)

cc: [the protested business]
Contracting Officer
ADD/MED

Appendix 3
(paragraph 4-6)
Sample Initial Letters

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Appendix 3 (cont'd)

a. Number of Employees

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

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If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)**b. Annual Receipts**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 SIC Code:
 Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement.

Annual receipts are defined in SBA's size regulations at 13 CFR § 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Application for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business' and affiliates' last annual statements to shareholders; and
- (6) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

c. Non-Manufacturing (Number of Employees)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.

If your business is supplying a product of another manufacturer, SBA Form 355 must be completed by that business as well. (See 13 CFR § 121.406.)

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to

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submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)**d. Manufacturer (Number of Employees)**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 SIC Code:
 Size Standard:

Dear:

Your small business status has been protested in connection with the subject procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification; and
- (6) a complete breakdown of your purchased parts or components and their respective value; the operations to be performed in-house with your own personnel; the methods or equipment to be utilized; and the value of labor contribution. Describe in detail your operations toward the manufacture of the end product.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)**e. 8(a) Eligibility (Number of Employees)**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: 8(a) Program Eligibility
 SIC Code:
 Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of Minority Enterprise Development (MED) in connection with your application for participation in the MED Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business. The regulations at § 121.602 state an "MED applicant must be small for its primary industry at the time SBA certifies it for admission into the program"; therefore, the most current information will be used to make the determination.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) a completed SBA Form 355; and
- (2) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.
Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: MED Program Office

Appendix 3 (cont'd)**f. 8(a) Eligibility (Annual Receipts)**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose: 8(a) Program Eligibility
 SIC Code:
 Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Office of Minority Enterprise Development (MED) in connection with your application for participation in the MED Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business. The regulations at § 121.602 state an "MED applicant must be small for its primary industry at the time SBA certifies it for admission into the program"; therefore, the most current information will be used to make the determination.

Annual receipts are defined in SBA's size regulations at 13 CFR § 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Application for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form; and
- (3) complete financial statements and Federal income tax returns for the last three completed fiscal years for your business and any affiliates.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: MED Program Office

Appendix 3 (cont'd)

g. 8(a) Continued Participation (Number of Employees)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: Continued 8(a) Participation
Solicitation:
SIC Code:
Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Assistant District Director for Minority Enterprise Development (MED) in connection with your continued participation in the MED Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the present date.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) a completed SBA Form 355;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders; and
- (4) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

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If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: MED Program Office

Appendix 3 (cont'd)

h. 8(a) Continued Participation (Annual Receipts)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: Continued 8(a) Participation
Solicitation:
SIC Code:
Size Standard:

Dear:

Your firm's eligibility as a small business has been questioned by the Assistant District Director for Minority Enterprise Development (MED) in connection with your continued participation in the Section MED Program. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the present date.

Annual receipts are defined in SBA's size regulations at 13 CFR § 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Application for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine

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your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: MED Program Office

Appendix 3 (cont'd)

i. Financial Assistance (Number of Employees)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: SBA Financial Assistance
SIC Code:
Size Standard:

Dear:

Your firm's status as a small business has been questioned by the Assistant District Director for Financial Assistance. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the date of your application for financial assistance.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) a completed SBA Form 355;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders; and
- (4) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: Financial Assistance Office

Appendix 3 (cont'd)

j. Financial Assistance (Annual Receipts)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: SBA Financial Assistance
SIC Code:
Size Standard:

Dear:

Your firm's status as a small business has been questioned by the Assistant District Director for Financial Assistance. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size status of your business as of the date of your application for financial assistance.

Annual receipts are defined in SBA's size regulations at 13 CFR § 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Application for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax form).

The following information is required:

- (1) a completed SBA Form 355;
- (2) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification for your business and any affiliates.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

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If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the request
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: Financial Assistance Office

Appendix 3 (cont'd)

k. Joint Venture/Ostensible Subcontractor (Number of Employees)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your firm's status as a small business has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR § 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of its self-certification in its bid or offer on this procurement.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders; and
- (5) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification;
- (6) copies of technical & cost proposals, including Best and Final Offer; and
- (7) any agreements with subcontractors.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

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All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

I. Joint Venture/Ostensible Subcontractor (Annual Receipts)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your firm's status as a small business has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR § 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of its self-certification in its bid or offer on this procurement.

Annual receipts are defined in SBA's size regulations at 13 CFR § 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Application for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business' and affiliates' last annual statements to shareholders;
- (6) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates;
- (7) copies of technical & cost proposals; and

(8) copies of agreements with subcontractors.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

m. Franchise Agreement (Number of Employees)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your small business status with respect to your franchise agreement has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and SBA Form 355 (Application for Size Determination).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) a copy of your Articles of Incorporation and By-Laws;
- (4) your business' and affiliates' last annual statements to shareholders;
- (5) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification; and
- (6) a copy of your franchise agreement.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

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All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

n. Franchise Agreement (Annual Receipts)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your small business status with respect to your franchise agreement has been protested in connection with the above-referenced procurement. A copy of the protest is enclosed. Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business as of the date of your business' self-certification in its bid or offer on this procurement.

Annual receipts are defined in SBA's size regulations at 13 CFR § 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations, SBA Form 355 (Application for Size Determination), and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the allegations of the protest letter with any supporting evidence;
- (2) a completed SBA Form 355;
- (3) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form;
- (4) a copy of your Articles of Incorporation and By-Laws;
- (5) your business' and affiliates' last annual statements to shareholders;
- (6) a copy of your franchise agreement; and
- (7) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information

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unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your company to be other than a small business.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: copy of the protest
 SBA Form 355
 13 CFR Part 121 (size regulations)
 IRS Form 4506

cc: [the protestor]
 Contracting Officer

Appendix 3 (cont'd)

o. Certificate of Competency (Number of Employees)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by: COC Program
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your small business status has been questioned in connection with your application for a Certificate of Competency (COC) for the above-referenced procurement.

The concern is that your business

Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business in order to proceed with the COC process.

Number of employees is defined in SBA's size regulations at 13 CFR § 121.106. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations.

The following information is required:

- (1) your response to the concern(s) mentioned above;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders; and
- (4) a breakdown of the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods for the 12 months preceding your certification.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information

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unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small and, therefore, find your business ineligible for a COC.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosure: 13 CFR Part 121 (size regulations)

cc: COC Program

Appendix 3 (cont'd)

p. Certificate of Competency (Annual Receipts)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by: COC Program
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

Your small business status has been questioned in connection with your application for a Certificate of Competency (COC) for the above-referenced procurement.

The concern is that your business

Pursuant to 13 CFR Part 121, the Small Business Administration (SBA) must make a determination of the size of your business in order to proceed with the COC process.

Annual receipts are defined in SBA's size regulations at 13 CFR § 121.104. To assist you in providing the necessary information for SBA's size determination, I have enclosed a copy of our size regulations and IRS Form 4506 (Request for Copy or Transcript of Tax Form).

The following information is required:

- (1) your response to the concern(s) mentioned above;
- (2) a copy of your Articles of Incorporation and By-Laws;
- (3) your business' and affiliates' last annual statements to shareholders;
- (4) complete financial statements and Federal income tax returns for the last three completed fiscal years preceding your self-certification on this procurement for your business and any affiliates; and
- (5) IRS Form 4506 -- complete numbers 1, 2, 3, 9, and sign the form.

SBA recognizes the information you provide may be privileged or confidential and will not disclose such information unless Federal law permits.

All of these documents must be received by this office within three working days after receipt of this letter. If you fail to submit the completed application along with the other material requested within the specified time, SBA may determine your business to be other than small and, therefore, find your business ineligible for a COC.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

or Size Determination Specialist

Enclosures: 13 CFR Part 121 (size regulations)
IRS Form 4506

cc: COC Program

Appendix 4
(paragraphs 4-6, 7-3, and 9-3)
Sample SBA Form 355, "Application for Small Business Size Determination"



OMB Approval No. 3245-0101
 Expiration Date: 9-30-99

SBA FORM 355
APPLICATION FOR SMALL BUSINESS SIZE DETERMINATION

Carefully read these instructions and the SBA Size Regulations before completing this form.
 Applications not fully completed will not be accepted.

General Instructions

1. This application should be used by anyone seeking a size determination for the purpose of receiving assistance available to small businesses under any program administered by this Agency, except for the SBIC program which utilizes SBA Form 480. A small business is a concern which is independently owned and operated, not dominant in its field of operation, and does not exceed the size standard applicable to the procurement or program for which the business is applying.
2. SBA is authorized to make size determinations pursuant to the Small Business Act and regulations thereunder for the purpose of deciding small business protests and to determine eligibility for program assistance. SBA's size regulations are found generally at Title 13, Code of Federal Regulations, Part 121. SBA may, at its discretion, request additional relevant information not specifically identified on this form.
3. The original and one copy of SBA Form 355, with additional sheets attached as needed, should be returned to the SBA Area Government Contracting or Disaster Office closest to the applicant's principal place of business. The person signing this form must be authorized by the applicant to do so. Non-employee representatives of the applicant, such as attorneys or accountants, must provide a letter authorizing them to represent the firm for this purpose. All information requested must be supplied. Failure to do so will cause a delay in making the size or status determination.
4. All possible affiliates of the applicant, whether acknowledged or not, and whether foreign or domestic, must be included in completing this form. SBA criteria for defining affiliates should be carefully reviewed, and can be found at Part 121.103 of the Regulations. Completion of Parts IV and V of this form does not constitute an admission that the concerned entities are affiliated.
5. Where the applicable size standard involves "number of employees," a concern's average employment for the 12 months preceding the application or offer is examined, including all employees of both domestic and foreign affiliates, and including persons employed on a full-time, part-time, temporary or other basis. See Part 121.106 of the Regulations. For purposes of Economic Injury Disaster Loans, the 12 months preceding the disaster are examined.
6. Where the applicable size standard involves "annual receipts," a concern's annual receipts mean total income (or gross income in the case of a sole proprietorship) plus the cost of goods sold, as reported to the Internal Revenue Service on its Federal Income Tax Return. See Part 121.104 of the Regulations.
7. In some cases, SBA must determine the primary business activity of a concern as part of its size determination process. In making that determination, consideration is given to various criteria, such as distribution among a firm's activities of receipts, employment, and costs of doing business.
8. For purposes of this form, consider principal stockholders as those persons or concerns which own 10 or more percent of the voting stock. In cases where no individual or concern owns at least 10 percent of the voting stock, the five largest stockholders and their percentages of stock must be listed.
9. Where certain financial assistance programs are involved, applicants must include the county in which they are located, and state whether the funds to be received will be utilized in a Labor Surplus Area. Labor Surplus Areas are defined in the Department of Labor publication "Area Trends." See Part 121.301(e) of the Regulations.
10. Certain industries require special additional information. Consult the Size Standards Table and its footnotes at Part 121.201 of the Regulations. These special industries are:

Depository Institutions (SICs 6021, 6022, 6029, 6035 or 6036)
 Dredging and Surface Cleanup Activities (SIC 1629)
 Conference Management Services (SIC 8741, part)
 Petroleum Refining (SIC 2911)

Tires and Inner Tubes (SIC 3011)
 Real Estate Agents and Managers (SIC 6531)
 Travel Agencies (SIC 4724)
 Food Canning and Preserving (SIC 2033)
 Advertising (SICs 7311-19)
 Electric Services (SIC 4911)

SBA Form 355 (9-96) Previous Edition is Obsolete

This form was electronically produced by Elite Federal Forms, Inc.

Printed Recurring Program Printed on Recycled Paper

Appendix 4 (cont'd)

**SMALL BUSINESS ADMINISTRATION
APPLICATION FOR SMALL BUSINESS SIZE DETERMINATION**

Part I. Information relating to Applicant Only:

<p>1a. Name and address of applicant: (Street, City, State & Zip Code)</p>	<p>1b. Name and title of person authorized to provide more information:</p>																					
Telephone No.: _____																						
<p>1c. Located in _____ county. If determination is needed for a financial assistance program other than surety bond guarantee, will assistance funds be used in a labor surplus area? Yes _____ No _____</p>	<p>1d. Size/Status Determination requested for purpose of receiving:</p> <table border="0" style="width: 100%;"> <tr> <td>Business Loan _____</td> <td>Section 8(a) Eligibility _____</td> </tr> <tr> <td>Econ. Injury Disaster Loan _____</td> <td>Section 8(a) Contract _____</td> </tr> <tr> <td>Cert. of Competency _____</td> <td>Surety Bond Guarantee _____</td> </tr> <tr> <td>Gov't. Prime Contract _____</td> <td>Women-Owned Status _____</td> </tr> <tr> <td>Gov't. Subcontract _____</td> <td>Other (Specify) _____</td> </tr> </table>	Business Loan _____	Section 8(a) Eligibility _____	Econ. Injury Disaster Loan _____	Section 8(a) Contract _____	Cert. of Competency _____	Surety Bond Guarantee _____	Gov't. Prime Contract _____	Women-Owned Status _____	Gov't. Subcontract _____	Other (Specify) _____											
Business Loan _____	Section 8(a) Eligibility _____																					
Econ. Injury Disaster Loan _____	Section 8(a) Contract _____																					
Cert. of Competency _____	Surety Bond Guarantee _____																					
Gov't. Prime Contract _____	Women-Owned Status _____																					
Gov't. Subcontract _____	Other (Specify) _____																					
<p>1e. Date applicant's business was established or incorporated: _____ Note: If applicant is a corporation, a copy of its latest annual report to stockholders, by-laws, and articles of incorporation must be attached to this application. If applicant is a partnership, a copy of the Partnership Agreement must be attached.</p>																						
<p>1f. Overall primary business activity (including Standard Industrial Classification (SIC) Code):</p>	<p>1g. Has applicant previously been the subject of a formal SBA size determination? Yes _____ No. If yes, by which SBA office? When? _____</p>																					
<p>2. Applicant's major products or services:</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Product/Services</th> <th style="text-align: left;">Standard Industrial Classification (SIC) Code</th> <th style="text-align: left;">Share of Sales or Receipts for most recently completed fiscal year</th> </tr> <tr> <th></th> <th></th> <th style="text-align: left;">% of total sales Dollar value</th> </tr> </thead> <tbody> <tr><td>(1) _____</td><td>_____</td><td>_____</td></tr> <tr><td>(2) _____</td><td>_____</td><td>_____</td></tr> <tr><td>(3) _____</td><td>_____</td><td>_____</td></tr> <tr><td>(4) _____</td><td>_____</td><td>_____</td></tr> <tr><td>(5) _____</td><td>_____</td><td>_____</td></tr> </tbody> </table>		Product/Services	Standard Industrial Classification (SIC) Code	Share of Sales or Receipts for most recently completed fiscal year			% of total sales Dollar value	(1) _____	_____	_____	(2) _____	_____	_____	(3) _____	_____	_____	(4) _____	_____	_____	(5) _____	_____	_____
Product/Services	Standard Industrial Classification (SIC) Code	Share of Sales or Receipts for most recently completed fiscal year																				
		% of total sales Dollar value																				
(1) _____	_____	_____																				
(2) _____	_____	_____																				
(3) _____	_____	_____																				
(4) _____	_____	_____																				
(5) _____	_____	_____																				
<p>3. Does applicant issue or operate under a franchise, license, or other contractual agreement with another concern? Yes _____ No. If answer is yes, a copy of the agreement must be attached.</p>																						
<p>4. Name & address of owner, partners, & principal stockholders of applicant: (Street, City, State & Zip Code) (Partnerships must denote all general partners.)</p>	<p>% of voting stock or of business owned</p>																					
<p>5. Names & addresses of all Officers of applicant</p>																						
<p>Office(s) held in applicant</p>																						

Appendix 4 (cont'd)

Names & addresses of all Officers of applicant (Continued)	Office(s) held in applicant
6. Names & addresses of all Directors of applicant (if a corporation):	
7a. Are any stock options outstanding? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, identify person or concern holding option(s) on attached sheet and furnish a copy of agreement(s).	
7b. Is the stock held by a lender or other party as pledged collateral? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, attach a copy of the agreement.	
7c. Is any stock voted under a proxy agreement, a trust or voting trust? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, attach a copy of the agreement or trust, together with any explanatory material.	
8. Has applicant agreed to combine with or merge with another concern in the future by sale of stock or assets? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, furnish details and copies of applicable documents.	
9a. Is applicant or any of the persons listed in questions 4, 5 or 8 above an owner, partner, director, officer, employee or principal stockholder in any other concern(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, complete section 9b below.	
9b.	
Names of individuals	Names of concerns and addresses (Street, City, State & Zip Code)
Position held	% of voting stock or of business owned

Appendix 4 (cont'd)

Part II. Information relating to employee-based size standards.

10. Applicant's number of employees. (See instructions for definition of term "number of employees.") _____

Part III. Information relating to revenue-based size standards.

11. What is the applicant's fiscal year ending date? _____

12. Total sales or receipts of applicant for each of its most recently completed three fiscal years as of the date of application or offer. For the purpose of Economic Injury Disaster Loans, show the sales for the three fiscal years completed prior to the disaster.

19	\$	_____
19	\$	_____
19	\$	_____
Total	\$	_____

Part IV. Information relating to alleged, acknowledged, or possible affiliates of applicant, including those firms listed under Part I, item 9b.

13. Affiliates of applicant: (domestic and foreign)

NOTE: For each concern which is a corporation, a copy of the latest annual report to the stockholders, if available, and a copy of its articles of incorporation, and by-laws must be attached. For each affiliate which is a partnership, attach a copy of its partnership agreement.

13a. Names & addresses (Street, City, State & Zip Code)	% of voting stock or ownership of concern held by applicant	% of voting stock or ownership of applicant held by concern	Major products or services of concern (include SIC code)

13b. Names & addresses of owners, partners, officers, directors, and principal stockholders of each concern listed 13a. (Street, City, State, & Zip Code)	Position Held	% of voting stock or ownership of concern

13c. Number of employees of each concern listed in 13a. (Attach separate sheet if needed.)

1. _____ concern	# of employees _____
2. _____ concern	# of employees _____
3. _____ concern	# of employees _____

13d. Total sales or receipts of each concern for each of its most recently completed three fiscal years as of the date of application or offer. For the purpose of Economic Injury Disaster Loans, show the sales for the three fiscal years completed prior to the disaster.

1. _____ concern	2. _____ concern	3. _____ concern
19 \$ _____	19 \$ _____	19 \$ _____
19 \$ _____	19 \$ _____	19 \$ _____
19 \$ _____	19 \$ _____	19 \$ _____
Total \$ _____	Total \$ _____	Total \$ _____

14a. Are any of the persons listed in question 13b above also owners, partners, directors, officers or principal stockholders in any other company?
 Yes _____ No _____ If answer is yes, complete section 14b below.

14b. Name of Person _____ Name of company and its address (Street, City, State & Zip Code) _____ Position Held _____ % of voting stock or ownership of company held _____

Part V. Information relating to applicant and alleged, acknowledged or possible affiliates.
 Note: Complete questions 15 through 22 in all cases where you are contesting an alleged affiliation. If you are not contesting an alleged affiliation, complete questions 15 through 22 only if requested by SBA. For size determinations pertaining to procurement programs, questions 23-29 must also be completed. Attach a separate explanation for any question answered "yes."

15. Have any owners, officers, directors, key employees or supervisors of applicant ever been employed by or performed similar work for any of the alleged, acknowledged or possible affiliates? _____ Yes _____ No _____

16. At the time of bid opening or application for assistance or at the present, have any services been performed by applicant for any of the alleged, acknowledged or possible affiliates, or vice versa? _____ Yes _____ No _____

17. At the time of the bid opening or application for assistance, did applicant share any facilities, equipment, or personnel with any of the alleged, acknowledged or possible affiliates? (e.g. telephone lines, office space, vehicles, receptionist, etc.) _____ Yes _____ No _____

18. In preparing the subject bid or application for assistance, was any assistance provided by an alleged, acknowledged or possible affiliate to the applicant or by the applicant to an alleged, acknowledged or possible affiliate? _____ Yes _____ No _____

19. Have there been or are there any current financial obligations between applicant and an alleged, acknowledged or possible affiliate? _____ Yes _____ No _____

20. Are there any individuals who have signed or are expected to sign documents to facilitate the ability of applicant to receive indemnifications or credit guarantees, who are not owners, officers, directors, employees, partners, or principal stockholders of applicant? _____ Yes _____ No _____

21. Does any family member of an owner, partner, officer, director, or principal stockholder of applicant have an ownership interest in any of the alleged, acknowledged or possible affiliates? _____ Yes _____ No _____

22. Has SBA ever determined the applicant to be affiliated with any of the alleged, acknowledged or possible affiliates, or, to the best of your knowledge, determined any of the alleged, acknowledged or possible affiliates to be affiliated with each other? _____ Yes _____ No. If yes, attach a copy of the determination(s) if available, or describe the determination(s) made by SBA.

23. Will any of the alleged, acknowledged or possible affiliates, or any of their principals, provide an indemnity or guaranty to a surety to facilitate a contract award to applicant? _____ Yes _____ No. Has such an indemnity or guaranty been provided within the past two years? _____ Yes _____ No _____

24. Have any of the alleged, acknowledged or possible affiliates assisted in arranging for any of the subcontractors needed for performance of this contract or any contract awarded to applicant within the past two years? _____ Yes _____ No _____

25. Have there been or are there any actual or proposed subcontracts between applicant and any of the alleged, acknowledged or possible affiliates? _____ Yes _____ No _____

26. Were there any discussions as to specific terms or conditions relating to the subject contract which took place between applicant and any of the alleged, acknowledged or possible affiliates prior to bid opening? _____ Yes _____ No _____

27. Will any of the alleged, acknowledged or possible affiliates perform more than 25 percent of this contract? _____ Yes _____ No _____

28. If applicant were to be terminated for default on this or any other contract, would there be any financial impact on any of the alleged, acknowledged or possible affiliates or their principals? _____ Yes _____ No _____

29. Did the procuring activity mail your current bidding documents directly to any address other than applicant's current business address? _____ Yes _____ No _____

Appendix 4 (cont'd)

SMALL BUSINESS ACT PENALTIES FOR VIOLATIONS:

Section 16(a) of the Small Business Act, as amended, (the "Act") (15 USC 645 (a)), makes it a criminal offense punishable by fine of not more than \$5,000 or imprisonment for not more than two (2) years, or both, to make a willfully false statement or misrepresentation to the Small Business Administration (SBA) for the purpose of influencing in any way the action of the SBA for the purpose of obtaining a loan or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security thereof, or for the purpose of obtaining money, property, or anything of value.

Section 16(d) of the Act, (15 USC 645(d)), makes it a criminal offense to misrepresent in writing the status of any concern as a "small business concern" in order to obtain for oneself or another any prime contract to be awarded pursuant to section 9 or 15 of the Act, or any subcontract to be awarded pursuant to section 8(a) of the Act, or any subcontract included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d) for the Act, or any prime or subcontract to be awarded as a result or in furtherance of any other provisions of Federal law that specifically references section 8(d) of the Act a definition of program eligibility (such as the Small Disadvantaged Business contracting program). Violations of section 16(d) are punishable by a fine of not more than \$500,000 or by imprisonment for not more than ten years or both, and can result in certain administrative remedies, including suspension and debarment.

CERTIFICATION:

I hereby certify that all information contained above and in exhibits and attachments hereto is true and complete to the best knowledge and belief of the applicant and is submitted for the purpose of inducing the Small Business Administration to make a determination as to the size of the applicant, in order that the applicant may receive assistance as a small business under any of the laws administered by the Small Business Administration.

(Individual, partnership, trade name or corporation)

By _____

Title _____

Date _____

PLEASE NOTE: The estimated burden hours for the completion of this form is 4 hours per response. You will not be required to respond to this information collection if a valid OMB approval number is not displayed. If you have any questions or comments concerning this estimate or any other aspect of this information collection, please contact the U.S. Small Business Administration, Chief, Administrative Information Branch, 409 3rd St., S.W., Washington, D.C. 20416 and/or Office of Management and Budget, Clearance Officer, Paperwork Reduction Project (3245-0101), Washington, D.C. 20503.

Appendix 5
(paragraph 4-10)
Sample Confirmation Letter of a Contracting Officer's Verbal Deadline Extension

VIA FAX

Date

Name

Contracting Officer

Agency

Address

City, State, Zip

Subject: Solicitation No:
 Size Determination No:
 Name of Business:

Dear _____:

This is to confirm our telephone conversation of [date] wherein you agreed to grant SBA additional time to complete the size determination of [name of business] with respect to this solicitation.

SBA understands that you will wait for the size determination applicable to this procurement until at least [date] .

If for any reason you do not agree with the above summarization of our telephone conversation, please immediately notify me in writing. My fax number is [#] .

Sincerely,

Name

Size Determination Specialist

cc: [the business whose size is being determined]
 [the business that filed the protest]

Appendix 6
(paragraph 5-5)
Sample Size Determination Format

Size Determination
File Number __-SD-__-__

Date:
Size Determination of:
Address of Business:
City, State, Zip:

Solicitation No:
Procuring Activity:

SIC Code:
Size Standard:

INTRODUCTION: On [date], the U.S. Small Business Administration (SBA), Office of Government Contracting, received a timely and specific protest against [business], forwarded by the Contracting Officer, [agency, location]. The protest, filed by [protestor], alleged that [business] failed to meet the applicable small business criteria for the following reasons:

The subject solicitation is for [brief description of product or service]. This solicitation is a 100% small business set-aside classified under the SIC Code and Size Standard listed above.

The size of the subject business will be determined in accordance with 13 CFR Part 121.

EVIDENCE:

CONCLUSION: Based on the evidence above, [business] is found to be a small business for the referenced size standard and for this solicitation.

OR

Based on the evidence above, [business] is found to be other than a small business for this solicitation and for the referenced size standard.

Name
Area Director
for Government Contracting

Appendix 7
(paragraph 6-1)
Sample Notification Letters

<u>Notification Letters for:</u>	<u>Page</u>
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b. Other than Small.....	119
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Appendix 7 (cont'd)

a. Small Business

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is a small business under the size standard listed above. A copy of the formal size determination is enclosed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- the Area Office which issued the size determination;
- the date of receipt of the size determination;
- the solicitation or contract number;
- name, address and telephone number of the contracting officer;
- a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

Effective Date: January 28, 1998

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If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: [the protestor]
 Contracting Officer

Appendix 7 (cont'd)**b. Other Than Small**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 SIC Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- ☞ the Area Office which issued the size determination;
- ☞ the date of receipt of the size determination;
- ☞ the solicitation or contract number;
- ☞ name, address and telephone number of the contracting officer;
- ☞ a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- ☞ the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: [the protestor]
 Contracting Officer

Appendix 7 (cont'd)**c. Other than Small for this Procurement**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Protestor:
 Solicitation No:
 Procuring Activity:
 SIC Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small for this procurement. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- ☞ the Area Office which issued the size determination;
- ☞ the date of receipt of the size determination;
- ☞ the solicitation or contract number;
- ☞ name, address and telephone number of the contracting officer;
- ☞ a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- ☞ the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: [the protestor]
 Contracting Officer

Appendix 7 (cont'd)**d. Recertification Granted (Small)**

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
TitleSubject: Size Determination Case No:
Purpose: Recertification Request
SIC Code:
Size Standard:

Dear:

The Small Business Administration has made a formal size determination that your business is small under the size standard listed above. Therefore, your business is recertified as small under the above size standard. A copy of the formal size determination is enclosed.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name

Area Director

for Government Contracting

Enclosure

Appendix 7 (cont'd)

e. Recertification Denied (Other than Small)

mailing information/tracking number

Date

Business
Address
City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Purpose: Recertification Request
SIC Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above and has denied your application for recertification as a small business. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- the Area Office which issued the size determination;
- the date of receipt of the size determination;
- the solicitation or contract number;
- name, address and telephone number of the contracting officer;
- a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

Appendix 7 (cont'd)

f. Failure to Respond (Other than Small)

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Protestor:
Solicitation No:
Procuring Activity:
SIC Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small since your business failed to respond to our request for information. A copy of the formal size determination is enclosed.







Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

-  the Area Office which issued the size determination;
-  the date of receipt of the size determination;
-  the solicitation or contract number;
-  name, address and telephone number of the contracting officer;
-  a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
-  the name, address, telephone number and signature of the appellant or its attorney.

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A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: [the protestor]
 Contracting Officer

Appendix 7 (cont'd)

g. Small for MED or Financial Assistance

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
Title

Subject: Size Determination Case No:
Requested by:
Purpose: [MED Eligibility or Financial Assistance]
SIC Code:
Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is small under the size standard listed above. A copy of the formal size determination is enclosed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

☞ the area office which issued the size determination;
☞ the date of receipt of the size determination;
☞ the solicitation or contract number;
☞ name, address and telephone number of the contracting officer;

☞ a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
☞ the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very

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specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: MED Program or Financial Assistance

Appendix 7 (cont'd)

h. Other than Small for MED or Financial Assistance

mailing information/tracking number

Date

Business

Address

City, State, Zip

Attention: Point of Contact
 Title

Subject: Size Determination Case No:
 Requested by:
 Purpose:
 SIC Code:
 Size Standard:

Dear:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small under the size standard listed above. A copy of the formal size determination is enclosed.

Section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). However, it is within the OHA Judge's discretion whether to accept or deny an appeal petition. There is no absolute right to an appeal from a size determination.

An appeal petition must be filed with OHA at the following address:

Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, S.W.
Washington, DC 20416

An appeal petition must include the information listed below. If the appellant does not provide all this information, a summary dismissal may result.

- ☞ the Area Office which issued the size determination;
- ☞ the date of receipt of the size determination;
- ☞ the solicitation or contract number;
- ☞ name, address and telephone number of the contracting officer;
- ☞ a full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- ☞ the name, address, telephone number and signature of the appellant or its attorney.

A copy of the OHA regulations (13 CFR Part 134) is enclosed for your assistance. Please read them carefully for very specific filing instructions.

If additional information or assistance is needed please contact _____ at _____.

Sincerely,

Name
Area Director
for Government Contracting

Enclosures: size determination
 13 CFR Part 134 (OHA regulations)

cc: MED Program or Financial Assistance